

MONTE N. STEWART, Utah Bar #8324  
Special Assistant Attorney General  
HELEN A. FROHLICH, Utah Bar #8814  
Assistant Attorney General  
MARK L. SHURTLEFF, Utah Bar #4666  
Utah Attorney General  
5110 State Office Building  
Salt Lake City, UT 84114-2477  
Telephone: (801) 538-9527  
*Attorneys for Petitioner*

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF UTAH,

Petitioner,

vs.

UNITED STATE NUCLEAR REGULATORY  
COMMISSION, and the UNITED STATES OF  
AMERICA,

Respondent,

**PETITION FOR REVIEW**

*03-1022*

Pursuant to 28 U.S.C. §§ 2342-44, 42 U.S.C. § 2239(a)(1)(A) and (b)(1), 5 U.S.C. §§ 703, 704, 706, and Rule 15, Federal Rules of Appellate Procedure, the State of Utah petitions this Court for review of the Nuclear Regulatory Commission's Memorandum and Order, CLI-02-29, docketed and served on 18 December 2002 ("the Order") to the extent the Order denies Utah's Petition to Institute Rulemaking filed 11

February 2002. That denial constitutes final agency action subject to immediate appellate review. (Utah does not petition for review of the Order to the extent the Order resolves Utah's Suggestion of Lack of Jurisdiction filed 11 February 2002 in the licensing proceeding known as In the Matter of Private Fuel Storage, LLC (Independent Spent Fuel Storage Installation), Docket No. 72-22-ISFSI, ASLBP No. 97-732-02-ISFSI.)

Venue is proper in this Court pursuant to 28 U.S.C. § 2343.

Relief is sought on these grounds: Pursuant to 10 CFR 2.802(a), the State of Utah ("Utah") petitioned the Nuclear Regulatory Commission ("the Commission" or "the NRC") to amend its regulations governing independent spent fuel storage installations ("ISFSIs"), 10 CFR Part 72, to the extent those regulations may be deemed to relate to a privately owned, away-from-reactor, spent nuclear fuel storage facility. Specifically, Utah petitioned that the Commission amend the ISFSI regulations to make clear that licensing is allowed only for federally owned and operated away-from-reactor, spent nuclear fuel ("SNF") storage facilities and not for an away-from-reactor storage facility when privately owned. The requested amendment is necessary to bring the Part 72 regulation into conformity with governing federal law, the Nuclear Waste Policy Act of 1982, as amended, 42 U.S.C. §§ 10101 *et seq.* The Order denied Utah's Petition to Initiate Rulemaking.

Utah prays for an order from this Court directing that the Commission add the following language, or an appropriate equivalent, to 10 CFR Part 72 as section 72.2(d):

Notwithstanding any other provision in this Part, this Part does not authorize the licensing of any privately owned, away-from-reactor, spent nuclear fuel storage facility. Under federal law, storage of spent nuclear fuel from commercial nuclear power plants at an away-from-reactor storage facility is not allowed except in a Monitored Retrievable Storage facility owned and operated by the federal government pursuant to the Nuclear Waste Policy Act of 1982, as amended. An away-from-reactor, spent nuclear fuel storage facility is any ISFSI not located on, or adjacent to, a reactor site.

Dated: 11 February 2003

---

MONTE N. STEWART  
Special Assistant Attorney General  
HELEN A. FROHLICH  
Assistant Attorney General  
MARK L. SHURTLEFF  
Utah Attorney General  
*Attorneys for Petitioner*

## CERTIFICATE OF SERVICE

I hereby certify that on the 11<sup>th</sup> day of February, 2003, I served a true and correct copy of the foregoing **PETITION FOR REVIEW** via United States first-class mail, postage prepaid, to each of the following:

Tim Vollmann  
3301-R Coors Road N.W., Suite 302  
Albuquerque, NM 87120  
*Counsel for the Skull Valley Band  
of Goshute Indians*

Jay E. Silberg  
Ernest L. Blake, Jr.  
Shaw Pitman  
2300 N Street, N.W.  
Washington, D.C. 20037  
*Counsel for Private Fuel  
Storage, L.L.C.*

James A. Holtkamp  
Leboeuf, Lamb, Greene & MacRae  
136 S. Main Street, Suite 1000  
Salt Lake City, UT 84111  
*Counsel for the Skull Valley Band  
of Goshute Indians*

Val R. Antczak  
J. Michael Bailey  
H. Douglas Owens  
Parsons Behle & Latimer  
201 South Main Street, Suite 1800  
Post Office Box 45898  
Salt Lake City, UT 84145-0898  
*Counsel for Private Fuel  
Storage, L.L.C.*

---